defendant and his witnesses did not impress me as truthful witnesses and I came to the conclusion that the evidence of the rent collector for the Trustees, Muttaya, and of the Trustees, Chidamabaram and Perumal, of O. R. Nadar (deceased) themselves was most unreliable and inaccurate and I was unable to believe them. In my opinion their evidence was given with a view to enable the present owner of No. 73 to obtain a right to the possession of No. 75A and 75B. Although the present owner Nadaison is not before the Court, I feel I should say that I consider his action of going behind the backs of his tenants of No. 73 and getting the two huts in the compound of No. 73 renumbered for his own ends most reprehensible. No doubt, he did it out of greed in an endeavour to get more rent out of a property he had bought subject to existing tenancies. Further I am surprised that Chidambaram and Perumal, two of the sons of O. R. Nadar (deceased), a man well respected during his life time, should have lent themselves to such doubtful practices as agreeing to pay rent some months after the sale to Nadaison for huts one of which through the kindness of their previous tenant, the plaintiff, their employees had been permitted to occupy.

On the above facts, therefore, I hold that the defendant is only a licensee of the plaintiff and, on such licence being revoked, he must necessarily quit. The plaintiff revoked the licence to the defendant to occupy by notice (1) to him personally on the 15th February, 1950, and (2) to his employers on the 27th January, 1951, and the defendant not giving up possession the plaintiff brought this action.

The defendant's Counsel submitted that the form of action was wrong; it should have been one for trespass and not for possession, but on considering the authorities cited by Counsel for both parties and particularly the case of *Booker v. Palmer*[1] cited by Counsel for the plaintiff, I can see nothing wrong in the form of action.

There will be judgment for the plaintiff for possession of that portion occupied by the defendant of what is now known as No. 75B, Buffalo Road, and damages at the rate of $10 per month from the date when the notice terminating the licence to him expired (i.e. 17th February, 1950) to date when possession given to plaintiff and costs. Stay of execution as to possession to 29th February, 1952.

Judgment for the plaintiff.

KOH SEOK CHOO (m.w.) v. SIM CHIOW MOH.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Suit No. 353 of 1951]

Nuisance — Vibration from piling work — Structural damages.

The defendant began building operations on land adjoining the plaintiff's house. The vibrations set up by piling operations caused damage to the house.

Held, the defendant was liable for actionable nuisance.

Cases referred to :—

(1) *Hoare & Co. v. McAlpine* (1923) 1 Ch. 167; 92 L.J. Ch. 81.

(2) *Rylands v. Fletcher* L.R. 3 H.L. 330.

(3 *Wilkins v. Leighton* (1932) 2 Ch. 106.

ACTION for damages.

F. B. Oehlers for the plaintiff.

L. A. J. Smith for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Storr, J. : — The plaintiff is the owner of No. 14, Birch Road, Singapore — an end house of a row of 4 terrace shop houses adjoining the defendant's land. In May, 1950, the defendant commenced building operations on his land. He did certain excavation for the purpose of preparing the ground for piling — the normal method adopted for making foundations for buildings in that vicinity. He first "shored up" the end wall of the plaintiff's house to prevent subsidence from the excavation and any damage likely to be caused by piling operations.

At the end of May, 1950, the plaintiff gave notice to the defendant that she would hold him responsible for any "damage, breakage, and etc. to the wall of my house that may eventuate as a result of your work." The defendant continued with his building and certain piling operations were carried on during the month of June and possibly for a few days in July. The plaintiff alleges that due to the excavation and/or vibrations caused by the piling operations her house suffered damage (1) cracks in the cross walls, (2) cracked tiles on the roof and in consequence the roof leaked, and (3) the floor boards on the first floor became loose owing to the cracks in the cross walls, and she claimed that the defendant is liable for all the damage suffered by the house through the excavation and the vibrations caused by the piling operations and the resulting loss in the value of the house by reason of such damage.

The defendant denies that (1) the plaintiff has suffered any damage to her house and (2) alternatively, as he was only using his land in a normal manner (i.e. building houses on it) and that excavation and piling operations were the usual and normal method of building adopted on that type of land, he should not be held liable for any damage that might have resulted from the excavation and vibrations of piling operations that were in no way excessive.

On considering the whole of the evidence, I have come to the following conclusions on the facts :—

(1) No. 14, Birch Road, Singapore, is owned by the plaintiff and was built in accordance with plans prepared by the local authorities and at the commencement of the defendant's building operations on the adjoining land was in a reasonable state of repair and not in a dilapidated condition.

(2) The side wall of No. 14, Birch Road, was properly "shored up" by the defendant before he commenced his excavation works.

(3) The excavation works carried out by the defendant were normal for the type of building erected in that vicinity.

(4) The piling operations were not excessive and were normal for buildings erected in the vicinity.

(5) No damage to No. 14, Birch Road, can be attributed to excavation works.

(6) The roof was damaged owing to the cross wall immediately below it cracking. This was caused by vibrations from the piling operations of the defendant.

(7) There were 4 cracks in the cross walls that were caused by vibrations from the piling operations of the defendant all of which had been repaired by the defendant and only needed smoothing over.

(8) The looseness of the floor boards on the first floor was not caused by vibrations of the piling operations of the defendant.

(9) The plaintiff has failed to prove any depreciation in the value of No. 14, Birch Road, due to the damage caused by the operations of the defendant, but in any event I find it would be negligible.

Mr. F. B. Oehlers, in support of the plaintiff's case, relied on the case of *Hoare & Co. v. McAlpine*[1] in which it was held by Astbury, J. that the doctrine of *Rylands v. Fletcher*[2] applied to damage caused by vibrations from piling operations and the defendant's Counsel, Mr. L. A. J. Smith, relied on *Wilkins v. Leighton*[3]; the facts of that case were that a house was built on adjoining land to the plaintiff's and the weight of the house, some years after its erection, caused a wall on the plaintiff's land to collapse and damage his property, and Luxmore, J. there held that (1) the doctrine of *Rylands v. Fletcher*[2] did not apply as the building of a house was the normal use of the defendant's land, and (2) if the action was founded on nuisance it also failed because the defendant did not know there was a nuisance and could not with reasonable care have known of the existence of a nuisance. Having considered the judgment of Luxmore, J., I do not think it can be applied to the facts of the present case. In this case I consider that vibrations of the piling operations by the defendant which caused damage to the plaintiff's house amounted to an actionable nuisance of which the defendant must have had knowledge and that the defendant is liable for such damage.

I arrive at the same conclusion as Astbury, J. in *Hoare & Co. v. McAlpine*[1] which was a case based on very similar facts, but I do not consider that the doctrine of *Rylands v. Fletcher*[2] applies to such a case and I agree with the comments of Sir Frederick Pollock in his notes on the judgment of Astbury, J. at page 505 in *Pollock on Torts*, 13th edition :—

"In **Hoare & Co. v. McAlpine**, Astbury, J. accepted a suggestion, not necessary to the decision, that the rule extends to vibration set up in the soil by pile-driving (with the consequence of all damage therefrom being recoverable whether it amounts the nuisance or not); but this seems a fallacious extension. A man cannot be said to bring or collect vibrations on his land, nor can they be said to escape; neither are they noxious or dangerous in their own nature. On principle the cause of action is nuisance or nothing, and no authority can be shown for inventing any other."

I assess the damage to the cross walls of the plaintiff's house, taking into consideration the repairs already done by the defendant, at $150 and the damage to the roof at $300 — the amount paid by the plaintiff for the repairs.

I have no doubt that but for the avaricious attitude adopted by the husband of the plaintiff, who had the management of her affairs, this case would not have been brought to this Court.

There will be judgment for the plaintiff in the sum of $450 and Costs on District Court Scale.

Order accordingly.

LOOK CHUN HENG & ANOR. v. ASIA INSURANCE CO., LTD.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Suit No. 107 of 1951]

Executors and Trustees — Companies Ordinance, ss. 67 and 102 — Transfer of shares.

The testator died in 1931 having named six persons as executors and trustees. The will was proved by four of such persons, leave being reserved to the remaining two. Double probate was made by one of these remaining two. One of the clauses of the will directed the trustees to stand possessed of all the testator's property, movable and immovable, upon certain trusts. The debts of the estate and all estate duties were settled by the end of 1936. In 1944 only two of the executors and trustees who had proved were in Singapore, the plaintiffs — also executors and trustees — being out of the Colony The deceased held certain shares in the defendants Company and they were still in his name in 1944 when the Singapore executors and trustees transferred them for value, the defendants Company duly registering the new holder. The plaintiffs claimed that as the administration of the estate was completed by the end of 1936